

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sandhu v. Khalsa Diwan Society*,
2015 BCSC 1749

Date: 20150928
Docket: S147346
Registry: Vancouver

Between:

Amarjit Singh Sandhu

Petitioner

And

Khalsa Diwan Society

Respondent

Before: The Honourable Mr. Justice Kelleher

Reasons for Judgment

Counsel for the Petitioner:

Howard A. Mickelson, Q.C.
S. Virk
A. Doolittle

Counsel for the Respondent:

Scott Turner

Place and Dates of Hearing:

Vancouver, B.C.
September 1-3, 2015

Place and Date of Judgment:

Vancouver, B.C.
September 28, 2015

[1] This petition is brought by Amarjit Singh Sandhu, a member of the respondent Khalsa Diwan Society. The Society is a charitable organization comprised of members of the Sikh community in the greater Vancouver area. It has approximately 8,800 members.

[2] The purpose of the Society is the promotion of the tenets, philosophy, values and traditions of the Sikh religion. The Society maintains the Gurdwara, or Temple, at 8000 Ross Street in Vancouver.

[3] This dispute, like many before it, concerns the membership of the Society.

[4] The petitioner seeks the following relief:

1. a declaration that the membership enrolments received by the Society's Executive since January 1, 2012 are invalid and, to the extent necessary, an order invalidating such memberships, and an order that a neutral and impartial third party be appointed to administer a fair and transparent membership enrolment process;
2. in the alternative, a declaration that the membership enrolments received by the Society's Executive since January 1, 2012 are invalid and, to the extent necessary, an order invalidating such membership, and directions in respect of procedural guidelines for new membership enrolment and procedures for the new election of the Society's Executive;
3. an order that the Society proceed with the election of a new executive to be scheduled on such dates and such schedules as determined by this Court;
4. in the alternative, an order enjoining the Society's Executive from incurring any financial obligations on the Society's behalf or spending any of the Society's funds other than as reasonably necessary in the ordinary course of business;

5. the Court remains seized of the matter for the purpose of making ancillary or consequential directions as necessary.

[5] The petitioner also sought a declaration that the Annual General Meeting held by the Society on July 5, 2015 (and the vote that followed on July 12, 2015) was not a properly constituted and conducted Annual General Meeting and is therefore a nullity. He wishes to adjourn that application generally.

[6] The petitioner also seeks to adjourn generally its application for a declaration that the special resolutions passed on July 12, 2015 are void and an order that the constitutions and bylaws as they existed on January 26, 2014 are the governing constitution and bylaws of the Society.

[7] Elections of the Executive of the Society are often hotly contested. Because of that there has been much controversy surrounding membership enrolment processes. Enrolments and elections at the Society have been the subject of a number of decisions of this Court. Examples are:

- (1) *Sohi v. Khalsa Diwan Society*, [1999] B.J.C. No. 1299;
- (2) *Kaila v. Khalsa Diwan Society*, 2004 BCSC 1399;
- (3) *Sandhu v. Dhaliwal*, 2010 BCSC 1328, rev'd 2011 BCCA 24; and
- (4) *Sandhu v. Dhaliwa*, 2011 BCSC 1564.

[8] Membership procedures are significant because they directly affect the outcome of elections. As Mr. Justice Smart put it in a different dispute at a different Sikh temple:

[2] The requirements for membership in a society and the process by which determinations are made as to whether an applicant has met those requirements are matters of great importance to a society. Further, as it is only members who may vote at general meetings and at the election of a society's executive, the integrity of the membership enrolment process is closely connected to the integrity of the election itself. If membership enrolment is not conducted fairly, then it is unlikely that the election will be fair [*Samra v. Guru Nanak Gurdwara Society*, 2007 BCSC 882] [*Samra*].

[9] The Society's bylaws dictate the eligibility qualifications and requirements for membership in the Society. The relevant parts of Section A of the bylaws are as follows:

Section A: ELIGIBILITY, QUALIFICATIONS AND REQUIREMENTS

1. The following qualifications and conditions are required of an applicant for membership or renewal of membership in the Society:
 - ...
 - b. He/she must be 18 years of age or older at the time of his/her signing the membership application form.
 - c. He/she must be a Canadian citizen or a landed immigrant to Canada and must be primarily resident within the boundaries of the following cities, municipalities or districts of the Greater Vancouver Regional District: Richmond, Vancouver (including University Endowment Lands), Burnaby, New Westminster, Port Coquitlam, Coquitlam, Port Moody (including Belcarra and Anmore), District and City of N. Vancouver & District and City of West Vancouver.
 - d. He/she must apply for membership in writing by submitting a completed and signed application, in such form as may be prescribed from time to time by the Executive of the Society.
 - e. He/she must submit his/her own application form to the Society's office, at such times and to such persons as the Executive of the Society may from time to time designate, provided however that a person may have his/her form submitted by a family member who lives in the same residence as the applicant, in which case the person submitting the form on behalf of a family member shall verify and sign each such family members form.
 - f. He/she shall have paid such application fees and/or membership dues as may be set by the Executive of the Society from time to time and, in this regard, the Executive shall have the authority to establish appropriate application fees and membership dues of the Society, having regard to the affairs and needs of the Society, provided, however, that such application fees and/or membership dues shall not exceed \$25 for any three year period and provided further that he/she pay such application fees and/or membership dues only by way of cheque or money order bearing the address of the applicant and listing the applicant or a family member of the applicant as the payor. If the address on the cheque or money order is different from that shown on the application form, proof of residence must be produced....
(Emphasis added.)

[10] Until 2014, the term of membership was three years, expiring on March 31 in every third calendar year starting from 2005.

[11] On January 26, 2014, an extraordinary general meeting was held. On February 2, 2014 the members passed a special resolution changing the membership term to ten years. The resolution read reads as follows:

RESOLUTION:

BE IT RESOLVED by special resolution of the members of the Society that:

1. Paragraphs 2 and 3 of Section B of Chapter 2 of the Bylaws be, and the same hereby are, deleted in their entirety and replaced with the following:
2. Unless terminated sooner pursuant to the Society Act or these Bylaws, the term of membership in the Society of each person who is (or has been) admitted to membership on or after January 1, 2012, and on or before December 31, 2021, shall expire on March 21, 2022, unless such membership is renewed pursuant to paragraph 3 of this Section B.
3. A member who otherwise complies with Chapter 2 of these Bylaws may renew his or her membership in the Society at any time after January 1, 2022, by submitting a completed and signed application, in the form prescribed by the Executive of the Society at the time, and by paying any application fees or membership dues established by the Executive from time to time. The term of membership for members renewing their memberships after January 1, 2022, or who become new members renewing their memberships after January 1, 2022, or who become new members after that date, shall expire on a date to be determined by the Executive at that time, provided however, that the expiry date shall be a minimum of three (3) years after January 1, 2022.

BE IT RESOLVED that paragraph 6 of Section B of Chapter 2 of the Society's Bylaws be, and the same hereby is, deleted in its entirety.

[12] The petition includes an application for a declaration that this and other special resolutions passed on February 2, 2014 are void. The petitioner is not pursuing those applications.

[13] Rather, the focus of the petitioner's complaint is that the Executive of the Society, which controls the membership enrolment process, has failed to comply with the procedures in the bylaws. It accuses the executive of:

- (1) registering persons as members without requiring attendance at the Society's office;
- (2) registering persons as members without requiring them to sign the membership form; and
- (3) registering persons without requiring payment of application fees or membership dues.

[14] The petitioner seeks an order invalidating the membership and a new process of enrolment.

[15] The election of the Society's Executive was scheduled to take place in November 2014.

[16] The petitioner refers to himself as an "organizer" for the Sikh Sangat Seva Society of B.C., an unincorporated organization that was formerly called "Sikh Youth Vancouver". Mr. Sandhu deposes that this is a party that has fielded slates of candidates for election to the Society in the past. He said the Sikh Sangat intended to field the slate of candidates for the November, 2014 election.

[17] According to Mr. Sandhu, the first dispute to come to court was *Kaila v. Khalsa Diwan Society, supra*. This dispute was eventually resolved and resulted in a detailed consent order.

[18] The process that resulted in the consent order is referred to, at least by him, as "the transparent process". There are two versions of transparency that are acceptable to the petitioner. One involves the processing of all membership applications, not by the Executive alone, but by the Executive with a member of the opposition present as an observer. The other alternative is that the Executive's membership process is overseen by an independent observer retained for that purpose.

[19] The petitioner's concern is that the Executive not "stack" the membership rolls with its own supporters.

[20] Mr. Sandhu deposed that in 2012 he heard of members having difficulty obtaining membership forms. He deposed that he heard of people attending at the Society's office but finding no one to provide them with membership forms. He further deposed that many of his slate's supporters needed to attend the Gurdawara's office several times before they could obtain or submit their enrolment forms.

[21] For this reason he wrote to the Executive on April 7, 2012, inviting them to adopt a "fair and transparent process". There was no immediate response to this letter.

[22] Eventually both the Executive and Mr. Sandhu retained counsel. There was a flurry of correspondence.

[23] On July 30, 2014, counsel for the Society advised the petitioner's then-counsel that it had decided to engage a third party, Mr. Ron Laufer, to oversee the enrolment process for the period from August 1, 2014, September 7, 2014. The later date was the cut-off for eligibility to vote in the November election.

[24] Engaging Mr. Laufer was consistent with the "transparent process". There is no challenge to the enrolment process that took place between August 1, 2014 and September 7, 2014.

[25] As it turns out, Mr. Sandhu did not contest the November election. He gave the reasons for this in his affidavit, which he swore on December 1, 2014:

3. The reason that the Sikh Sangat did not put forward a slate of candidates is because the Society failed to address our concerns over the lack of transparent membership enrolment process and did so, despite the series of correspondence attached to my first Affidavit requesting such a process be put in place for membership enrolment. Further, as discussed in the Affidavit material supporting this Petition, and below in this Affidavit, the lack of a transparent enrolment process has led to a significant number of irregularities that have shattered our confidence in the Society's membership enrolment process before Mr. Laufer began overseeing the process in August, 2014.

4. I know that in regards to the membership enrolment, the court has stated that "a fair membership enrolment process is critical to a fair election

process". As we had no confidence that the Society could have a fair election process in the fall of 2014 we chose not to run a slate.

5. In addition to not wanting to participate in an unfair election process, we also did not want to put the Society to the expense of having an election where the results could not be trusted and would likely be invalid. In an effort to save the Society this expense, we instead brought this Petition to request a new enrolment process be ordered and following that, and new and fair election which would be free from controversy.

[26] There was no election. The Executive members were acclaimed.

[27] On December 8, 2014, this Court ordered that the Society's Executive be held over until March 1, 2015. The parties then subsequently agreed that the Executive be further held over until April 30, 2015. On May 1, 2015, the incoming Executive assumed governance of the Society pending hearing of this petition.

[28] Section 85 of the *Society Act*, R.S.B.C. 1996, c. 433 states:

85 (1) Despite anything in this Act, if an omission, defect, error or irregularity occurs in the conduct of the affairs of a society by which

- (a) a breach of this Act occurs,
- (b) there is default in compliance with the constitution or bylaws of the society, or
- (c) proceedings at, or in connection with, a general meeting, a meeting of the directors of the society or an assembly purporting to be such a meeting are rendered ineffective,

the court may

- (d) either of its own motion or on the application of an interested person, make an order
 - (i) to rectify or cause to be rectified or to negate or modify or cause to be modified the consequences in law of the omission, defect, error or irregularity, or
 - (ii) to validate an act, matter or thing rendered or alleged to have been rendered invalid by or as a result of the omission, defect, error or irregularity, and
- (e) give the ancillary or consequential directions it considers necessary.

(2) The court must, before making an order, consider the effect of it on the society and its directors, officers, members and creditors.

(3) An order made under subsection (1) does not prejudice the rights of a third party who has acquired those rights for valuable consideration without notice of the omission, defect, error or irregularity cured by the order.

[29] The petitioner's position is that there has been a default in compliance with the Society's bylaws within the meaning of s. 85(1)(b). If that is so, the issue is then whether the court should intervene.

[30] It is clear that if there is an irregularity or breach of the bylaws I may, not must, make orders to rectify and modify or negate the consequences of their irregularity. That is the effect of s. 85(1)(d) of the *Act*.

[31] In *Garcha v. Khalsa Diwan Society – New Westminster*, 2006 BCCA 140, Mr. Justice Hall, at para. 9, referred to the following comments of Mr. Justice Low in *Sarjit Singh Gill v. Khalsa Diwan Society* (3 December 1999), Vancouver Registry, A993150 (B.C.S.C.):

The court must find irregularities or errors before it has jurisdiction under s. 85. In my opinion there must be some connection between any irregularity proven and the relief sought. The authority under the section is to correct the problem and make necessary ancillary or consequential directions. The scope of this section is not very broad in the court's discretion is not unfettered.

The court is always reluctant to interfere in the internal affairs of any corporate body. The respondent Society should be left to govern itself in a democratic fashion and make its own decisions, including what may be seen by some of its members to be mistakes. The court should not presume that those in executive charge of the Society will conduct themselves contrary to the interests of the Society or that they will breach the rules of natural justice to the extent those rules apply to the business at hand.

(Emphasis added.)

[32] The irregularity should only result in setting aside the membership evidence if the irregularities are substantial and were calculated to affect the result. Both counsel commended to me the reasoning of Madam Justice McLachlin, as she then was, in *Leroux v. Molgat et al.* (1986), 67 B.C.L.R. 29 (B.C.S.C.).

[33] Her Ladyship put it this way:

If the plaintiff establishes irregularities, the onus shifts to the defendants responsible for the conduct of the election to show that those irregularities were not calculated to affect the result (at 31).

The question then is whether the irregularities were calculated to affect the result.

[34] The petitioner has presented evidence alleging several irregularities. I will consider five examples of alleged irregularities:

- (1) The evidence of Inderpal Randhawa;
- (2) The Sharma and Tumar membership evidence;
- (3) The evidence of Resham Singh Uppal;
- (4) The evidence of Manjit Singh Cheema;
- (5) The missing and inconsistent signatures.

1. The evidence of Inderpal Randhawa

[35] Mr. Randhawa deposed that in June, 2014, he had four membership application forms, one for himself, one for Binipal S. Sanghera, one for Gurpreet K. Sanghera and one for Kanwardeep S. Khira. He intended to register each person named on the form as a member of the Society.

[36] He deposed that he telephoned the office to inquire about registering the forms. According to him, Joginder S. Sunner told him that, "Kuldip Thandi can pick up the forms from you" or words to that effect. He said he was close to the Gurdwara and it was not necessary to have them picked up. He delivered the forms later.

[37] He attended at the Gurdwara in the Society's office and Mr. Thandi and Ranjit Hayer accepted the forms. He deposed that no one asked to verify his personal identity or to see identification. He was not asked whether the three persons on the other forms were related to him or lived in the same residence. He further deposed that he did not pay any membership fee and did not receive a receipt of application for membership.

[38] All four were registered as members.

[39] Kuldip Singh Thandi swore an affidavit, which, among other things, replies to Mr. Randhawa's affidavit. He deposed that he did not remember accepting a form from Mr. Randhawa and that he does not know Mr. Randhawa. He said although he was frequently present at the Gurdwara he did not formally accept applications because he was not a member of the Executive at that time.

[40] Ranjit Singh Hayer has filed an affidavit in response as well. He deposed that because Mr. and Mrs. Sanghera do not live at the same address as Mr. Randhawa he would not have accepted their forms from him. He rebuts the evidence that there was no membership fee paid and no receipt issued. Attached to his affidavit are three receipts: one to Kanmordip Khaira for \$10, one to Binipal Singh Sanghera for \$20, and one to Inderpal Randhawa for \$10. The receipts are numbered sequentially and all are dated on July 31, 2014.

[41] On all the evidence I conclude that receipts were, in fact, issued but that the membership applications were accepted without regard to the fact that they did not live in the same residence as Mr. Randhawa.

[42] Moreover there is no denial from Mr. Sunner that he told Mr. Randhawa that "Kuldip Thandi can pick up the forms from you".

[43] I conclude that these applications were neither accepted nor processed in a manner consistent with the bylaws.

2. The Sharma and Kumar membership evidence

[44] The circumstances described contain a series of apparent coincidences. Mr. Sandhu testified that when he was going through the membership forms he identified an address which he happened to know was not occupied by a member of the Sikh community.

[45] Mr. Sandhu is in the property development business. He knew that the property was not occupied by a member of the Sikh community because the address at issue had been mentioned to him as a possible property to purchase.

[46] Mr. Sandhu deposed that he had looked into that property and recalled that the owner was Caucasian.

[47] He then deposed that he followed up by actually knocking on the door of the house. He was informed by the tenant who was not a member of the Sikh community that the current owner was Balkar Bhullar. Mr. Bhullar is a family friend of Mr. Sandhu.

[48] Mr. Sandhu deposed that he took the further step of contacting the previous owner, Peggy Lou Bentley. Ms. Bentley deposed that no one with the name Sharma or Kumar had lived in the home, including on the date the memberships were apparently filled out.

[49] Mr. Kuldip Singh Thandi notes that the owner of the property, Balkar Bhullar, is a supporter of the Sikh Sangat.

[50] The circumstances surrounding this membership procedure are confusing. Given the relationship among the parties, the number of coincidences and the curious application forms from an address where the persons did not reside, I am unable to reach any final conclusion on this matter. If this were the sole basis of the petitioner's case, I would order cross-examination on the affidavits.

[51] However, I am able to reach a decision on the merits of the petition without considering this portion of the petitioner's evidence.

3. The evidence of Resham Singh Uppal

[52] Resham Uppal swore an affidavit on August 13, 2015. He deposed that Joginder Sunner is the acting Secretary of the respondent Society. He and Mr. Sunner both work at Mainland Sawmills in Vancouver. Mr. Uppal deposed:

4. In or about December 2013, Mr. Sunner approached me at the Mill and gave me a number of Society membership forms. He asked me to take those forms home so that my family and I could fill them out. He told me to bring the completed forms back to work and then he would take them back to the Society so that me and my family could be enrolled as members of the Society.

5. I brought the forms home that day or very soon after. My family and I filled out the forms and approximately two weeks later I brought the completed forms back to the Mill to [sic] and gave them to Mr. Sunner. I also gave Mr. Sunner \$50 cash for the membership fees, as there are 5 members of my family and the membership fee is \$10 per person.

6. Mr. Sunner wrote me a receipt and informed me he would bring the forms to the Temple and enrol my family and the membership fee is \$10 per person.

7. This is not the first time that this has happened. Mr. Sunner also made the same request of me for the previous two terms that he and his group were the Executive of the Society. On those occasions, the same thing happened in that I received forms from Mr. Sunner at the Mill, filled them out with my family at home, and returned the completed forms to Mr. Sunner at work so that he could take them into the Temple for me and enrol us as members in the Society.

[53] His oath was administered by Allan Doolittle, of counsel for the petitioner.

[54] On August 18, 2015, five days later, Mr. Uppal swore a new affidavit in which he recanted virtually everything he said:

3. My first language is not English.

4. I was born in India. I came to Canada in 1976. I have worked at the Mainland Sawmill on Yukon Street in Vancouver for the past approximately thirty-nine years.

5. When Mr. Doolittle took my first affidavit, he read its contents to me. However, I did not have an interpreter present and I did not fully understand what it was he had written.

6. I have since had my affidavit translated to me. In paragraph 4, I said that in or about December 2013, Mr. Sunner approached me at the mill and gave me a number of Society membership forms. This is not correct. I obtained forms myself, at the Society, in June or July 2013. I did not receive them from Mr. Sunner.

7. I am informed that I also said, at paragraph 5 of my 1st affidavit, that I filled out completed forms and gave them back to Mr. Sunner at the mill. Again, this is not true.

8. It is true that I filled out the forms at home. Now shown to me marked and attached to this my affidavit as Exhibit "A" are copies of my own membership application form and those of my family members, Joginder

Uppal (who is my father), Nasib Uppal (who is my mother), Ranjit Uppal (who is my son) and Sarabjit Uppal (who is my wife).

9. I submitted each of these five forms to Mr. Sunner at the temple on July 25, 2013. I did not give them to him at the mill.

[55] Counsel for the petitioner sought to introduce three rebuttal affidavits.

[56] The affidavits are from Mr. Doolittle, the lawyer who prepared the first affidavit and who took Mr. Uppal's oath; from the petitioner, who was present when Mr. Uppal visited Mr. Doolittle's office; and from Gurnam Singh Johal, who was also present. The respondent objected to the admissibility of all three affidavits.

[57] I admitted the affidavits. Rebuttal evidence is admissible to contradict or qualify new factual issues raised in the defendant's case: see Sopinka, Letterman & Bryant *The Law of Evidence in Canada*, 4th ed. (Markham, Ont: LexisNexis Canada, 2014) at para. 16.211.

[58] Rebuttal evidence cannot be used to split one's case or to bolster the credibility of a witness. It must address new issues which could not have been reasonably anticipated.

[59] I held that the evidence of the three witnesses fits clearly within the rule. Recanting one's sworn evidence five days after giving it is a serious matter. The reply evidence is clearly material to an important question of fact before the court.

[60] The rebuttal evidence of Mr. Doolittle is that when Mr. Uppal came to his office he was accompanied by the petitioner and Gurnam Singh Johal. Mr. Doolittle deposed he was "very surprised" to read in Mr. Uppal's second affidavit that he did not understand the contents of the first affidavit. Mr. Doolittle deposed that Mr. Uppal did in fact understand it:

5. First, Mr. Uppal and I went over his affidavit line by line and I ensured that he understood it in its entirety. Mr. Uppal's English was not perfect, however, he was able to answer the series of questions I posed to him so that I could draft his affidavit with the necessary detail. I have assisted Mr. Mickelson on a variety of other 'Temple Disputes' and have had occasion to interview witnesses and draft affidavits following those interviews including cases where the language barrier has been far more significant.

6. In the course of the interview Mr. Uppal provided a number of details to me in English including how long he had worked at the sawmill, details of his relationship with Mr. Sunner, and very specific details about Mr. Sunner having had provided him with membership forms at the sawmill which Mr. Uppal filled out with his family at home, and then returned to Mr. Sunner at the sawmill so that Mr. Sunner could bring those forms back to the Temple without Mr. Uppal having had to attend the Temple for that purpose.

7. Further, it was clear that Mr. Uppal understood everything that was being discussed because he added key details, such as the fact that Mr. Sunner, on two separate and previous occasions, had also brought completed forms into the Temple on Mr. Uppal's behalf. Mr. Uppal and I discussed how this was contrary to the bylaws and was an unfair practice on the part of the Executive. We discussed this aspect specifically in relation to the final paragraph of Mr. Uppal's affidavit.

8. The majority of the discussion that day was in English. However, there were a few occasions where Mr. Uppal, Mr. Sandhu and Mr. Johal discussed what I assumed were aspects of the affidavit in another language, which I assumed to be Punjabi. I do not speak Punjabi nor do I speak any other language fluently other than English.

9. The only thing that Mr. Uppal was not sure about was the exact timing of when Mr. Sunner provided membership forms for him and his family to fill out in 2013. He told me he thought it was late in the year. In order to refresh his recollection, we looked at the membership list attached to Mr. Sandhu's second affidavit, which records Mr. Uppal having become a member in January 2014. Mr. Uppal then stated that as he had the forms at home for approximately two weeks before he returned them to Mr. Sunner at the sawmill, he would have received the forms in or about December 2013.

10. After I had interviewed Mr. Uppal I redrafted his affidavit (more than once) to incorporate his comments and suggestions for changes. In advance of the meeting with Mr. Uppal, Mr. Sandhu had explained to me what he understood Mr. Uppal's evidence was going to be, and I had prepared a rough outline based on that information for the purposes of interviewing Mr. Uppal, which I then edited several times.

11. I recall that on one occasion when I was in my office doing this redrafting while Mr. Uppal, Mr. Sandhu and Mr. Johal were in the boardroom, Mr. Sandhu left the boardroom to find me to relay a message from Mr. Uppal to be sure to include the detail about Mr. Uppal having received a receipt from Mr. Sunner at the sawmill after having given Mr. Sunner the forms so that Mr. Sunner could deliver them to the Temple.

12. I also recall, towards the end of the meeting, Mr. Uppal asking me if he would have to testify in court. I informed him that this was a Petition, and the evidence was done by affidavit, and so it was unlikely that he would have to appear in court.

13. Based on the hour of conversing with Mr. Uppal in English, the thought of using an interpreter never even crossed my mind.

14. At the end of the meeting, I again reviewed the affidavit with Mr. Uppal, who appeared to have read the affidavit. After the affidavit had

been reviewed in its entirety in its final form by Mr. Uppal, I commissioned Mr. Uppal's swearing of the affidavit pursuant to my usual practice, which is to ask the following questions, all of which were answered in the affirmative by Mr. Uppal: have you read the affidavit? do you understand the contents of the affidavit? do you swear that the contents of the affidavit are true to the best of your knowledge, information, and belief? and do you understand that the statements in the affidavit have the same force and effect as if given in the court under oath?

[61] Mr. Sandhu corroborates Mr. Doolittle's evidence:

9. I was very surprised and concerned upon reading Mr. Uppal's second affidavit. I was present with Mr. Uppal when he attended counsels' office on August 13, 2015 at approximately 10:30 to 11:30 a.m. to prepare and have his first affidavit sworn. Mr. Johal, a long-time friend of Mr. Uppal, was also present for that meeting, along with my counsel, Mr. Doolittle.

10. During that meeting Mr. Doolittle interviewed Mr. Uppal and asked a number of questions about Mr. Uppal interaction with Mr. Sunner in relation to membership forms. During this time, Mr. Uppal provided the details requested and asked for clarification where he did not understand exactly what Mr. Doolittle was asking. As both Mr. Johal and I are fluent in both English and Punjabi, we discussed and explained the contents of the affidavit. The entire contents of the affidavit were reviewed with Mr. Uppal in our presence, and there were several discussions in Punjabi where my clarification was requested or needed.

11. I recall several instances where Mr. Uppal provided Mr. Doolittle with specific details regarding his affidavit. For example, we specifically discussed how long he had the membership forms at home before he brought them back to Mr. Sunner at the sawmill (see following paragraph). Further, I remember clearly Mr. Doolittle confirming with Mr. Uppal that it was Mr. Sunner who returned the completed forms to the Temple, and not Mr. Uppal. Mr. Uppal agreed, and also added that Mr. Sunner had done the same thing for the past two terms he was on the Executive of the Society – a detail that could only have come from him and was specifically added by him.

12. The only thing that Mr. Uppal was uncertain about was the exact date that Mr. Sunner had brought the forms to him at the sawmill. Mr. Uppal thought it was late 2013, but was unsure. As a result, to see if there were some written record that may assist him in refreshing his recollection, we checked the membership list which is attached to my second affidavit. The membership list recorded that Mr. Uppal became a member in January of 2014. I specifically recall Mr. Uppal explaining that he thought it took him approximately two weeks from the time Mr. Sunner gave him the forms to the time he returned the completed forms to Mr. Sunner so that Mr. Sunner could return those forms to the Temple. Mr. Uppal thought that it was likely Mr. Sunner had originally provided the forms to him in mid-December, 2013, and so the affidavit reads "in or about" December 2013, as Mr. Uppal couldn't be sure of the exact date.

13. I also recall that while Mr. Uppal, Mr. Johal and I were in counsels' boardroom while Mr. Doolittle was making some changes to the affidavit

suggested by Mr. Uppal in his office, Mr. Uppal again reviewed paragraph 5 of the affidavit and asked me to go tell Mr. Doolittle to be sure to include the fact that Mr. Sunner provided him with a receipt at the Mill. I also recall that Mr. Uppal expressed a concern that he did not want to testify in court about this matter, and that Mr. Doolittle told him it was unlikely he would have to, as this was a Petition and was done on affidavit evidence.

14. Finally, before Mr. Uppal swore his affidavit, I recall Mr. Doolittle confirming with Mr. Uppal that he had read the affidavit and that he understood it. When Mr. Johal, Mr. Uppal and I left counsel's office, there was no doubt in my mind that Mr. Uppal understood the contents of his affidavit.

[62] Mr. Johal's evidence is to the same effect. He deposed that Mr. Uppal approached him on two occasions, telling him he was concerned how the Executive had recruited people in the past and that he wanted to swear an affidavit. Mr. Johal goes on to relate what occurred in the office of Mr. Doolittle:

5. On August 13, 2015 I attended the offices of Mr. Sandhu's counsel along with Mr. Sandhu and Mr. Uppal so that Mr. Uppal could swear an affidavit explaining the fact that he and his family became members of the Society without having to attend the Temple to do so. We arrived at the office at approximately 10:30 a.m., and were there for about one hour.

6. I was very surprised to read in Mr. Uppal's second affidavit that he claimed that he did not understand the content of his first affidavit which was sworn at that August 13th meeting.

7. First, I had no concerns with Mr. Uppal's ability to communicate with Mr. Sandhu's counsel, as his English is passable in my opinion, and further, as both Mr. Sandhu and I speak both English and Punjabi fluently, Mr. Uppal was able to ask, and did ask questions in relation to the affidavit such that he seemed not only to understand the entirety of the affidavit, but also provided additional information to counsel while he was being interviewed, such as how long he worked at the sawmill, how long he had known Mr. Sunner, and also details about the timing of receiving the forms, taking them home, and then returning them to Mr. Sunner so that Mr. Sunner could take them into the Temple. Many of these details were communicated to counsel in English, and there was no concern expressed by anyone present that Mr. Uppal had failed to understand any of the affidavit.

8. I recall Mr. Uppal being unsure about the exact date at which this occurred. He recalled it was late in 2013, however he was unsure of the month. As a result, I recall we checked the Society's membership list so that Mr. Uppal could refresh his memory. The membership list recorded that Mr. Uppal was registered as a member in January of 2014. As a result, Mr. Uppal concluded that all this occurred approximately two weeks before January, in December 2013.

9. There was no question in my mind that Mr. Uppal understood the contents of the affidavit. Mr. Doolittle went over the entirety of the affidavit line

by line with Mr. Uppal, and where there was any uncertainty or request for clarification, Mr. Sandhu and myself discussed the contents of the affidavit with Mr. Uppal in Punjabi.

10. That Mr. Uppal understood the affidavit was especially clear as it was Mr. Uppal who brought up the fact that Mr. Sunner had done this same thing for him and his family during the past two terms he served as an Executive of the Society.

11. I also recall a discussion between Mr. Uppal and Mr. Doolittle in which Mr. Uppal asked Mr. Doolittle if he would have to attend court. Again, this communication took place in English, including Mr. Uppal's inquiry as to whether he would have to attend court. Mr. Doolittle told him it was unlikely, in that this was a Petition, and Petitions were usually only done through affidavit evidence.

12. Further, I recall a discussion between the four of us about the final paragraph of the affidavit in which Mr. Uppal discussed how it was unfair of the Executive to break the Society's Bylaws by bringing forms into the Temple on the behalf of their supporters.

13. Finally, I recall Mr. Doolittle, at the end of the one hour meeting, asking Mr. Uppal if he had read and understood the affidavit to which Mr. Uppal said he had. Mr. Uppal then swore the affidavit.

[63] When I received the rebuttal affidavits and reviewed them, it became clear that there was a serious conflict in the evidence. I considered but decided not to order cross-examination on the affidavits. I advised counsel that I was prepared to hear applications to cross-examine witnesses.

[64] Counsel for the Society then applied to have Mr. Uppal placed under oath. This was opposed by counsel for the petitioner. Counsel for the Society was seeking to cross-examine Mr. Uppal on his first affidavit.

[65] I ruled against the Society. The Society had already addressed Mr. Uppal's evidence by having him swear an affidavit recanting the evidence of August 13. The petitioner is not applying to cross-examine Mr. Uppal on his affidavit of August 18. I reasoned that if I permitted counsel for the respondent to call Mr. Uppal and ask him questions about the August 13 affidavit, those would no longer be timely. That evidence had been already addressed by Mr. Uppal's recanting. Questions about the August 18 affidavit would be just as problematic. Mr. Turner would be cross-examining his own witness.

[66] I do not believe Mr. Uppal when he asserts that he did not fully understand the first affidavit. It is entirely inconsistent with the evidence of Mr. Doolittle, which I accept. Mr. Doolittle's evidence is that he was painstaking in ensuring that Mr. Uppal understood what he was signing. Mr. Doolittle's evidence in this regard is consistent with the probabilities: see *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.).

[67] Moreover, Mr. Doolittle's evidence is corroborated by Messrs. Sandhu and Johal.

[68] Mr. Uppal and his family members became members of the Society in a manner inconsistent with the bylaws.

4. The evidence of Manjit Singh Cheema

[69] Mr. Cheema was a member of the Executive Committee, elected in 2012. He has sworn two affidavits in this matter. In the first, dated April 30, 2015, he deposed that in July and August 2014, he dropped off membership cards to various friends and relatives in Vancouver, Burnaby and New Westminster. He deposed in his second affidavit, dated August 10, 2015, that he was accompanied by Jarmail Singh Bhandal, a former president of the Society. He deposed that Mr. Bhandal "partially or almost entirely" filled in many of the forms. Mr. Cheema names 36 persons who became members in this way. He said membership forms were picked up. The people would be enrolled "without signing up at the Society premises, or, for many of them, providing their own membership dues".

[70] He said that in the summer of 2014 he saw Kashmir Singh Dhaliwal and Kuldip Singh Thandi take membership forms to the soccer grounds near Trout Lake. They took completed forms to the Society's premises. Thus, the members were enrolled without attending at the Society. He said that Mr. Thandi and Mr. Dhaliwal told him "... they were going to return the completed forms to the Society premises so that these individuals could be enrolled as members of the Society". Mr. Thandi later confirmed to him that the individuals whose homes they visited had enrolled.

[71] Kuldip Singh Thandi swore an affidavit on May 1, 2015. He is the President-elect of the Society. He denies what he calls "spurious allegations" that he and Mr. Dhaliwal collected membership forms at soccer grounds near Trout Lake. He refers to the allegations as "false and malicious" and denies them "completely". In his second affidavit, filed August 28, 2015, Mr. Thandi denies that he told Mr. Cheema that he would take the membership forms back to the Temple to have them processed.

[72] Sohan Deo is the president of the Society. He said he had no personal knowledge of the Cheema allegations but he said that Mr. Cheema was "disappointed" when he was not included in the slate of candidates acclaimed in October, 2014. Mr. Deo "surmises" that Mr. Cheema came forward because he is bitter.

[73] Mr. Bhandal agrees that he and Mr. Cheema did visit individuals in their homes to encourage them to become members. He sometimes offered to fill out membership forms because many of the people they met cannot read or write competently in English. He denies bringing the forms to the Society. Mr. Bhandal's evidence is that he insisted that the Society's rule that members must bring in their forms themselves be followed.

[74] There is a conflict on the evidence.

[75] In the oft-quoted decision of *Faryna, supra* Mr. Justice O'Halloran stated that a trial judge should be less focussed on the personal demeanour of a particular witness and more focussed on whether the witness's story is consistent with the probabilities surrounding the currently existing conditions:

...In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which are practical and informed person would readily recognize as reasonable in that place and in those conditions [at 357].

[76] Here it is significant to me that Mr. Thandi limited himself to a general denial of what Mr. Cheema had to say. Mr. Deo has no personal knowledge of the matter

but surmises that Mr. Cheema is bitter. The fact that Mr. Cheema may be bitter does not mean that Mr. Cheema would be prepared to concoct stories and swear to them under oath.

[77] Mr. Dhaliwal generally denies that there were any irregularities in the manner in which he accepted membership forms but does not specifically deny Mr. Cheema's allegations. It is significant to me that Mr. Dhaliwal does not deny the actions attributed to him. As well, 36 people are named as having been signed up without either personally, or having a family member who resides at the same address, return their membership forms to the Temple. That evidence is uncontradicted.

[78] I accept Mr. Cheema's evidence. These procedures he described are inconsistent with the bylaws.

5. Missing and inconsistent signatures

[79] There are a number of the examples where the member has not signed the membership registration form. As well, there are several instances of two signatures for the same person, which seem to be entirely dissimilar.

[80] The lack of a signature is, in fact, an irregularity. But it is not the sort of irregularity that would cause the court to take action. Rather, I would validate those.

[81] I must also consider the matter of the non-matching signatures. It appears that many legitimate forms bear different signatures. This however may depend on whether the individual is writing his or her name or signing it.

[82] It must be kept in mind that English is not the first language of many Society members. It is not utterly shocking that a signature learned later in life is not written consistently. I do not attach significant weight to either the missing or the inconsistent signatures.

Conclusion

[83] Some of the defects are, in the words of Mr. Justice Wilson in *Kaila v. Khalsa Diwan Society*, 2004 BCSC 1399 "a function of the constituency". By that his Lordship is referring to the fact that for many members of the Society, English is not their first language.

[84] However, the defects described by Mr. Randhawa, Mr. Uppal and Mr. Cheema are significant.

[85] The Society amended its bylaws to require that at least one member of a household actually attend at the temple to hand in the form showing identification and so on. Certain members of the Executive have not complied with this.

[86] I have considered whether this is simply a technical breach. I have concluded that it is not. This Society decided that this aspect was so important that it changed the bylaws to require it.

[87] The circumstances of the Uppal allegations are particularly serious. Certain senior members of the Society did not respond to the allegations by seeking to explain them. Rather they sought to mislead the court. I do not accept that Mr. Uppal did not understand the content of the first affidavit he signed or that senior members of the Society had no part in his decision to swear a new affidavit.

[88] The respondent has not established that these irregularities "were not calculated to affect the result" (*Leroux, supra*).

[89] Mr. Sandhu urged the Executive as early as 2012 to use a transparent process. By that he meant have a third party or an independent opposition member present. The Executive did not, until August 1, 2014, take this advice.

[90] On one level, one can fully understand the decision of the Executive in this regard. It is they, not Mr. Sandhu, who were elected to administer the Society. Moreover, engaging an independent third party adds considerable expense.

[91] But if the Executive decides, as it is entitled to decide, not to use a transparent process, it is incumbent on the Executive to comply with the bylaws. They have failed to do so.

Remedy

[92] I return to the previously noted words of Mr. Justice Smart in *Samra, supra*:

If membership enrolment is not conducted fairly, then it is unlikely that the election will be fair.

[93] Those are exactly the circumstances that are present here. It is noteworthy as well that membership now has a term of ten years. This is all the more reason to follow the bylaws in a painstaking manner.

[94] That is not what happened here. The Executive has enrolled members without requiring adherence to the bylaws. The Executive has permitted persons to become members without physically attending at the office. That is exactly what the bylaws were amended to require.

[95] In *Kaila, supra* an irregularity in registration was remedied, prior to an election, by the court directing a further period of membership enrolment. In the present case, simply adding additional weeks of membership enrolment would not correct the defect that stands to affect future elections. The perception that one group has gained an unfair electoral advantage through non-compliance with the bylaws could result in a lack of confidence in a fair election process.

[96] I conclude that a new membership enrolment and a new election must take place.

[97] The Society must continue to function. For that reason, the Executive are deemed to be members.

[98] There is a question concerning persons who became members between August 1 and September 7, 2014. No complaint is made about the manner in which

they were enrolled. However, it may be more confusing to maintain their membership and set aside all the others.

[99] I have concluded that it is the parties to this petition who are in the best position to determine the details of the remedy. I will reconvene the hearing if there is disagreement on any aspect of implementing the remedy of a new election.

[100] The matter of costs is referred back to the parties for discussion as well.

“S. Kelleher J.”